

104TH CONGRESS
1ST SESSION

H. R. 2166

To amend the Internal Revenue Code of 1986 to impose a minimum tax
on certain foreign and foreign-controlled corporations.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 1995

Mr. HUNTER introduced the following bill; which was referred to the
Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to impose
a minimum tax on certain foreign and foreign-controlled
corporations.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness and Equity
5 Tax Act of 1995”.

6 **SEC. 2. MINIMUM TAX ON FOREIGN AND FOREIGN-OWNED**
7 **CORPORATIONS.**

8 (a) IN GENERAL.—Subchapter A of chapter 1 of the
9 Internal Revenue Code of 1986 (relating to determination

1 of tax liability) is amended by adding at the end the fol-
 2 lowing new part:

3 **“PART VIII—MINIMUM TAX ON CERTAIN FOREIGN**
 4 **AND FOREIGN-OWNED CORPORATIONS**

“Sec. 59B. Minimum tax on certain foreign and foreign-owned
 corporations.

5 **“SEC. 59B. MINIMUM TAX ON CERTAIN FOREIGN AND FOR-**
 6 **EIGN-OWNED CORPORATIONS.**

7 “(a) IMPOSITION OF TAX.—In the case of a corpora-
 8 tion to which this section applies, the taxable income of
 9 such corporation for the taxable year from each category
 10 of its business activities shall not be less than 90 percent
 11 of the amount determined by applying the applicable profit
 12 percentage to the gross receipts of such corporation for
 13 the taxable year from such category of business activities.

14 “(b) CORPORATIONS TO WHICH SECTION APPLIES.—
 15 This section shall apply to a corporation for the taxable
 16 year if—

17 “(1) such corporation is—

18 “(A) a domestic corporation which is 25-
 19 percent foreign-owned, or

20 “(B) a foreign corporation which has gross
 21 income which is effectively connected with the
 22 conduct of a trade or business within the Unit-
 23 ed States, and

1 “(2) has substantial foreign-related person
2 transactions during the taxable year.

3 “(c) EXCEPTION WHERE ALTERNATIVE METHOD
4 APPROVED BY THE SECRETARY.—

5 “(1) IN GENERAL.—Subsection (a) shall not
6 apply for purposes of determining the taxable in-
7 come of any corporation to which this section applies
8 from any category of business activities if, when
9 such corporation files its return for the taxable year,
10 a qualified section 482 agreement is in effect with
11 such corporation for such year with respect to such
12 category.

13 “(2) QUALIFIED SECTION 482 AGREEMENT.—
14 For purposes of this subsection, the term ‘qualified
15 section 482 agreement’ means any agreement be-
16 tween the Secretary and a corporation to which this
17 section applies with respect to the application of this
18 section with respect to all transactions with related
19 parties in any category of business activities of such
20 corporation. The Secretary may enter into such an
21 agreement if, in the Secretary’s sole discretion, the
22 Secretary determines that such an agreement will re-
23 sult in a clear reflection of the taxable income of the
24 corporation from the category of activities to which
25 such agreement relates.

1 “(3) AGREEMENT MAY BE GIVEN RETROACTIVE
2 EFFECT.—If, when entering into a qualified section
3 482 agreement, the Secretary determines, in the
4 Secretary’s sole discretion, that such agreement
5 should also apply to prior taxable years, the require-
6 ment of paragraph (1) that the agreement be in ef-
7 fect when the corporation files its return shall not
8 apply for purposes of applying such agreement to
9 such prior taxable years as may be specified in such
10 agreement.

11 “(d) EXCEPTION WHERE SECRETARY CANNOT CAT-
12 EGORIZE ACTIVITIES.—In the case of a corporation whose
13 activities cannot be categorized by the Secretary on the
14 basis of 1 or more 3-digit classifications of the Standard
15 Industrial Classification Code as described in subsection
16 (h)(3), in lieu of subsection (a), there is hereby imposed
17 a minimum tax equal to 35 percent of the product of—

18 “(1) 9 percent, and

19 “(2) the gross receipts of the taxpayer from the
20 sale or leasing of property manufactured by the tax-
21 payer or by any foreign person that is a related
22 party of the taxpayer.

23 “(e) WAIVER IN CASE OF CASUALTY OR DISASTER.—
24 This section shall not apply to the extent that the Sec-
25 retary determines, in the Secretary’s sole discretion, that

1 by reason of any casualty or disaster the application of
2 this section would be inequitable.

3 “(f) TREATMENT OF FOREIGN TAXES.—For pur-
4 poses of this section, taxable income shall be determined
5 without regard to any income, war profits, or excess prof-
6 its taxes paid to any foreign country or to any possession
7 of the United States.

8 “(g) APPLICABLE PROFIT PERCENTAGE.—

9 “(1) IN GENERAL.—For each calendar year
10 after 1995, the Secretary shall prescribe an applica-
11 ble profit percentage for each category of business
12 activities. Such percentage shall apply to taxable
13 years beginning in the calendar year for which pre-
14 scribed.

15 “(2) BASED ON AVERAGE EARNINGS RATES.—
16 The applicable profit percentage prescribed under
17 paragraph (1) for any category of business activities
18 shall be based on the average earnings rates of do-
19 mestic corporations which had taxable income from
20 such category of business activities.

21 “(3) EARNINGS RATE.—The earnings rate of
22 any domestic corporation for any category of busi-
23 ness activities shall be based on the ratio of—

24 “(A) the adjusted book income of the do-
25 mestic corporation from such activity, to

1 “(B) the gross receipts of such domestic
2 corporations from such activities.

3 For purposes of the preceding sentence, the term
4 ‘adjusted book income’ means income as reported for
5 financial purposes but disregarding any reduction
6 for any income, war profits, or excess profits taxes
7 imposed by the United States, any possession of the
8 United States, or any foreign country.

9 “(h) DEFINITIONS AND SPECIAL RULES.—For pur-
10 poses of this section:

11 “(1) 25-PERCENT FOREIGN OWNED.—The term
12 ‘25-percent foreign-owned’, ‘foreign person’, and ‘re-
13 lated party’ have the respective meanings given such
14 terms by section 6038A(c).

15 “(2) SUBSTANTIAL FOREIGN-RELATED PERSON
16 TRANSACTIONS.—A corporation has substantial for-
17 eign-related person transactions for a taxable year if
18 the aggregate amount involved in transactions with
19 related parties who are foreign persons during such
20 taxable year exceeds the lesser of \$2,000,000 or 10
21 percent of the gross income of the corporation for
22 such taxable year. Only amounts which are taken
23 into account in the determination of taxable income
24 of the corporation shall be taken into account under
25 the preceding sentence.

1 “(3) CATEGORY OF BUSINESS ACTIVITIES.—
2 Business activities shall be categorized by reference
3 to the 3-digit classification of the Standard Indus-
4 trial Classification Code. The Secretary may provide
5 for the aggregation of 2 or more 3-digit classifica-
6 tions where appropriate and for a classification sys-
7 tem other than the Standard Industrial Classifica-
8 tion Code in appropriate cases.”

9 (b) CLERICAL AMENDMENT.—The table of parts for
10 subchapter A of chapter 1 of such Code is amended by
11 adding at the end the following new item:

 “Part VIII. Minimum tax on certain foreign and foreign-owned
 corporations.”

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 December 31, 1995.

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